



Department of Economic and  
Development Services  
Planning Division

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**PLANNING COMMISSION STAFF REPORT  
PUBLIC HEARING**

Application Type	Type V Legislative Amendment
Application Number	LA 2014-01
Project Description	Medical Marijuana Dispensaries
Project Location	Entire City
Zoning	Industrial Park (IP) Light Industrial (IL)
Planner Assigned	Don Dolenc, Associate Planner
120-Day Deadline	Not Applicable to Legislative Decisions
Date of Staff Report	December 4, 2014
Date of Public Hearing	December 11, 2014

**BACKGROUND**

In 1998, Ballot Measure 67 established the Oregon Medical Marijuana Act, which is codified in ORS 475.300 – 475.346.

In 2013, House Bill 3460 created a medical marijuana registration system and allowed medical marijuana facilities to be located in areas zoned for commercial, industrial, or mixed use.

In 2014, Senate Bill 1531 gave local governments the ability to impose “reasonable regulations” on the operation of medical marijuana facilities, such as limitations on the hours of operation, location, and the manner in which a facility dispenses marijuana. It also gave cities the ability to impose a moratorium on facilities until May 1, 2015.

In February 2014, Ordinance 2514 was enacted, prohibiting establishment of medical marijuana facilities for one year, until the City has had a chance to amend the WDO to establish zoning regulations for medical marijuana facilities within the City. Additional information can be found on the Secretary of State webpage noted below:

Webpage: ([http://arcweb.sos.state.or.us/pages/rules/oars\\_300/oar\\_333/333\\_061.html](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_061.html))

The Planning Commission conducted a workshop meeting on October 23, 2014 and gave staff general input into potential standards that could be considered in the amendments to the WDO. To allow the Council sufficient time to reach a final decision before the moratorium deadline, Commission deliberations and recommended actions need to be completed by December 18, 2014. This may necessitate a special meeting on December 18<sup>th</sup>.

This amendment establishes the zoning regulations for marijuana dispensaries. It limits dispensaries to industrial zones at least 1,000 feet from residential property, schools, day care facilities, parks, and other dispensaries. It also prohibits operation of marijuana dispensaries under a Temporary Outdoor Marketing and Special Event permit and would prohibit such dispensaries as a Home Occupation.

This past November, Oregon voters approved Measure 91, which legalizes the recreational use of marijuana by persons 21 years of age and older. This takes effect on July 1, 2015. Adults can carry up to one ounce of marijuana, keep up to eight ounces at home per household, and grow up to four plants per household. Measure 91 also establishes the provision for retail sales outlets. The Oregon Liquor Control Commission (OLCC) is tasked with developing standards for retail outlets, which will be completed over the next year. As complicated as medical marijuana dispensaries are, retail sales of recreational marijuana will add further confusion to the process and any ultimate standards. It is unclear at this point as to whether medical dispensaries and retail sales will be regulated separately or combined. Is there a need to ultimately have separate standards for both, or should there be just one overall standard addressing all marijuana dispensaries?

The proposed ordinance is intended to address both medical and retail dispensaries, referencing marijuana dispensaries in general, rather than solely focusing on medical marijuana dispensaries. This measure establishes local standards for dispensaries. At this point, state law provides for medical marijuana dispensaries, but retail sales of marijuana are currently illegal, regardless of local land use standards. Once OLCC develops standards for retail sales of marijuana, further amendments to the WDO can be considered.

## **ANALYSIS AND FINDINGS OF FACT**

### **WDO 4.01 Decision Making Procedures**

**Findings:** Under Section 4.01.02.E of the Woodburn Development Ordinance, decisions involving legislative actions where the City Council amends the City's land use regulations are Type V decisions. The Planning Commission holds an initial public hearing on the proposal and makes a recommendation to the City Council. The City Council then holds a *final* public hearing and makes the City's final decision, which is appealable to the Land Use Board of Appeals within 21 days after it becomes final.

**Conclusions:** This legislative amendment is correctly processed as a Type V decision.

Findings: Under Section 4.01.02.E, the City Council must initiate legislative decisions. Section 3 of Ordinance 2947 “initiates an amendment to the WDO to establish appropriate zoning regulations for marijuana facilities”.

Conclusion: This legislative amendment was correctly initiated by the City Council.

Findings: Under Section 4.01.10, the Planning Commission must hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal, at or before the hearing. The Director notifies the Oregon Department of Land Conservation and Development (DLCD) at least 35 days before the first hearing.

Once the Planning Commission hearing has been scheduled and notices sent out, the Director prepares and makes available a report on the proposal at least seven days before the hearing.

At the conclusion of the hearing, the Planning Commission adopts a recommendation on the proposal to the City Council. If the Commission recommends adoption of some form of the proposal, the Commission must prepare and forward to the City Council a report and recommendation to that effect.

Upon receiving a recommendation from the Planning Commission on a legislative action, the City Council holds at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at, or prior to, the hearing. At the conclusion of the hearing, the City Council may adopt, modify or reject the legislative proposal, or may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby enact or amend the City’s land use regulations, the City Council decision is enacted as an ordinance.

Not later than five working days following the City Council’s final decision, the Director mails notice of the decision to the DLCD in accordance with ORS Chapter 197.

Conclusions: The Planning Commission is scheduled to conduct a public hearing before making recommendations to the City Council. Notice has been provided to the Oregon Department of Land Conservation and Development (DLCD). Background information, including the staff report, has been made available for public inspection. The City Council will conduct a public hearing on January 12, 2015 to receive the Commission’s recommendations and public input. All provisions of this section of the WDO and State statute have been met.

Findings: Public notice was provided for all public hearings in accordance with Section 4.01.14 of the WDO. Individual property owner notice was not required under Ballot Measure 56. Notice of the public hearing was published in the Woodburn Independent newspaper on November 26, 2014.

All notifications contained information regarding the time, date, and location of the public hearings, the file number, and staff contact information for questions or submission of

testimony. All notification documents provided information regarding the public hearing procedures and how to review or obtain copies of the documents to be considered.

Conclusion: Notification requirements consistent with the provisions of the Woodburn Development Ordinance and statutory requirements were met.

### Woodburn Comprehensive Plan

Findings: The Comprehensive Plan (Volume 1 Goals and Policy Amendments) states: "The keystone of plan implementation is the Woodburn Development Ordinance (WDO). This WDO ensures that the location and design of various land uses and in some cases, the timing of those land uses, is in compliance with the Comprehensive Plan. The WDO ensures that incompatible uses do not occur, while allowing flexibility consistent with the purpose of the plan."

Conclusions: The proposed amendments carry out State Statute and ensure that incompatible uses do not occur. The proposed amendments are consistent with the Comprehensive Plan.

Findings: The Comprehensive Plan (Volume 1 Goals and Policy Amendments) states: "The planning process is continuous. There is no plan that can foresee all of the problems the future will bring. ... The Planning Commission should ensure that any change it makes in the Comprehensive Plan is consistent with other goals and policies established in this Plan."

Conclusions: The Comprehensive Plan recognizes that plans and implementing ordinances like the WDO continue to evolve and change over time. The proposed amendments are consistent with the intent of the Comprehensive Plan and statewide goals and guidelines.

Findings: The State adopted 19 goals for state and local land use decisions. The statewide planning goals applicable to this case are Goals 1 (Citizen Involvement) and 2 (Land Use Planning).

Goal 1 requires that the City develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. Agency and public notice have been provided. A workshop has been held and public hearings are being conducted.

Goal 2 requires that the City establish a land use planning process and policy framework as a basis for all decision and actions related to the use of land and to assure an adequate factual base for such decisions and actions. The Woodburn Development Ordinance contains procedures and requirements for facts and findings. The proposed amendments require additional findings for residential density transfer bonuses.

Conclusion: The proposed amendments are consistent with applicable statewide planning goals.

## Woodburn Development Ordinance

**Findings:** Table 2.04A lists the uses allowed in the industrial zones of the City. The proposed change to Table 2.04A is as follows:

Uses Allowed in Industrial Zones Table 2.04A						
Use			Zone			
Accessory Uses (A)    Conditional Uses (CU)    Permitted Uses (P)			IL	IP	P/SP	SWIR
Special Permitted Uses (S)    Specific Conditional Uses (SCU)						
B	Commercial Retail and Services					
9	Marijuana dispensaries (as defined by State statutes)		S	S		

**Conclusion:** The proposed amendment would allow marijuana dispensaries only in the IL and IP zones, subject to special conditions. The special conditions are enumerated later in this report.

**Findings:** Home Occupations are allowed in the residential zones of the City, subject to Section 2.07.10 of the WDO. The proposed change to Section 2.07.10 is as follows:  
Prohibited Activities

....

Marijuana Dispensaries.

**Conclusion:** The proposed amendment would prohibit marijuana dispensaries as Home Occupations.

**Findings:** Temporary Outdoor Marketing and Special Events are allowed in the commercial zones of the City, subject to Section 2.07.17 of the WDO. The proposed change to Section 2.07.17 is as follows:

### Permitted Uses

1. Seasonal sales of fireworks, Christmas trees, produce or plant materials, **except marijuana**
2. Amusement rides and games
3. Entertainment
4. Any other merchandise or service, **except marijuana dispensaries**

**Conclusion:** The proposed amendment would prohibit marijuana sales and marijuana dispensaries as Temporary Outdoor Marketing and Special Events.

Findings: If marijuana dispensaries are listed as Special Permitted Uses in Table 2.04A, the special conditions must be listed in Section 2.07. A proposed new Section 2.07.19 is as follows:

**2.07.19 Marijuana Dispensaries**

- A. The dispensary shall not be located within 1,000 feet of the real property comprising:
  - 1. a public or private elementary, secondary or career school attended primarily by minors;
  - 2. a child care facility;
  - 3. a public park or public recreational facility;
  - 4. property designated residential on the Comprehensive Plan Map;
  - 5. another marijuana dispensary;
  - 6. the dispensary shall be located entirely within a permanent building;
  - 7. drive-through service is prohibited;
  - 8. maximum allowed gross floor area for a dispensary is 3,000 square feet;
  - 9. enhanced exterior security lighting

Conclusion: The proposed amendment establishes the special conditions applicable to medical marijuana dispensaries.

**OVERALL CONCLUSION AND RECOMMENDATION**

The proposed amendment is consistent with the Woodburn Comprehensive Plan and the Woodburn Development Ordinance. It is recommended that the Commission forward LA 2014-01 to the City Council for final consideration and action.

**LIST OF EXHIBITS**

- A. Map showing 1,000 foot buffer from schools
- B. Map showing 1,000 foot buffer from schools, child care facilities, parks, and residential property (WDO 2.07.19.B)
- C. November 13, 2014 memo from Scott Russell, Chief of Police
- D. Dispensaries Check List